

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:ITA:B05

PLR-140715-15

Date:

June 13, 2016

Legend

Taxpayer =

Year 1 =

Partnership =

State =

Date 1 =

Partner 1 =

Partner 2 =

Property =

X =

Y =

Z =

Firm 1 =

A =

Firm 2 =

B =

Month =

Date 2 =

Date 3 =

=

Dear :

This letter responds to your letter requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make an election under § 108(c)(3)(C) of the Internal Revenue Code. Specifically, you have requested an extension of time to make an election under § 108(c)(3)(C) and § 1.108-5(b) of the Income Tax Regulations, to exclude income resulting from the discharge of qualified real property business indebtedness, and to reduce the basis of depreciable real property, effective for Taxpayer's Year 1 federal income tax return.

FACTS

Taxpayer uses the cash method of accounting and has a calendar year as her annual accounting period. Taxpayer is a member of Partnership, which is a calendar year-end partnership that files its tax returns using the accrual method of accounting. Partnership was organized on Date 1 in State as a limited liability company.

Taxpayer owns an x percent interest in Partnership. Partner 1 and Partner 2 each own y percent and z percent interests, respectively. Partnership's sole business activity is to own, manage, and operate Property. During Year 1, Partnership negotiated with its lender a reduction of Partnership's business indebtedness encumbering the Property. As a result of the discharge, Partnership realized cancellation of indebtedness (COD) income.

Partnership hired Firm 1 to prepare its Year 1 tax return. Firm 1 concluded that in Year 1 Partnership realized COD income eligible for exclusion from gross income under § 108(a)(1)(D). In preparing Partnership's Form 1065, *U.S. Return of Partnership Income*, A, Partnership's accountant at Firm 1, prepared and filed with the Service Form 982, *Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment)*, making the election under § 108(c)(3)(C) to exclude the COD income and to reduce the basis of Property.

In conjunction with the filing of its Year 1 return, Partnership issued to Taxpayer a Year 1 Schedule K-1, *Partner's Share of Income, Deductions, Credits, etc*, reporting Taxpayer's allocable share of the COD income. In preparing Taxpayer's Year 1 Schedule K-1, A reduced Taxpayer's allocable share of COD income by Taxpayer's allocable share of Partnership's excluded COD income.

During Month, Partnership received additional information about Partnership's COD income in Year 1. A prepared Partnership's amended Year 1 tax return, including amended Schedules K-1 for the three partners. A sent amended Schedules K-1 to all partners, however, Firm 1 did not file the amended return because it did not receive Form 8879-PE, *IRS 3-file Signature Authorization for Form 1065*, from Partnership.

Taxpayer timely filed a Form 4868, *Application for Automatic Extension of Time to File a U.S. Individual Income Tax Return*, requesting a six-month extension of time to file Taxpayer's Year 1 income tax return. On or about Date 2, Firm 2 and B prepared and filed Taxpayer's income tax return for Year 1. B did not make a separate election on behalf of Taxpayer or advise Taxpayer to make an election, because A already made the election on Partnership's return.

Partner 2 did not intend and, consequently, did not make a § 108(c)(3)(C) election with his Year 1 individual tax return. In reviewing Partnership's return for Year 1, the accountant for Partner 2 discovered that the return contained an erroneous election at the partnership level instead of at the partner level as required under § 108(d)(6). Partner 2 contacted Taxpayer and Partner 1, who in turn notified Firm 1 and A of the error. Firm 1 sought legal advice as to the most effective way to remedy the mistake and learned that a private letter ruling is required to make the late § 108(c)(3)(C) election.

Firm 1 has prepared a corrected amended Year 1 Form 1065 for Partnership and prepared amended Schedules K-1. Firm 1 has filed a corrected amended Year 1 Partnership return on Date 3, and has issued the amended Schedules K-1 to Taxpayer and partners.

Taxpayer represents that she relied on Firm 1, Firm 2, A, and B to report the COD income in the most tax-efficient manner for Partnership and its members. The most efficient approach would have been for Taxpayer to make a § 108(c)(3)(C) election.

Taxpayer represents that granting relief under § 301.9100-3 will not result in a lower tax liability in the aggregate for all years to which the election applies than each partner would have had if the election had been timely made.

LAW AND ANALYSIS

Section 108(a)(1)(D) provides that gross income does not include any amount that would be includible in gross income by reason of the discharge of indebtedness if, in the case of a taxpayer other than a C corporation, the indebtedness discharged is qualified real property business indebtedness.

Section 108(c)(1) provides that the amount excluded from gross income is applied to reduce basis of depreciable real property of the taxpayer. Section 108(c)(3)(C) requires a taxpayer to make an election to exclude COD income under § 108(a)(1)(D).

Section 108(c)(2)(A) provides that the amount excluded under § 108(a)(1)(D) for any qualified real property business indebtedness does not exceed the excess (if any) of (i) the outstanding principal amount of such indebtedness (immediately before the discharge), over (ii) the fair market value of the real property described in paragraph (3)(A) (as of such time), reduced by the outstanding principal amount of any other qualified real property business indebtedness secured by such property (as of such time).

Section 108(c)(2)(B) provides that the amount excluded under § 108(a)(1)(D) does not exceed the aggregate adjusted basis of depreciable real property (determined after any reductions under § 108(b) and § 108(g)) held by the taxpayer immediately before the

discharge (other than depreciable real property acquired in contemplation of such discharge).

Section 108(d)(6) provides that in the case of a partnership, § 108(a) and § 108(c) are applied at the partner level.

Section 1.108-5(b) provides that the election under § 108(c)(3)(C) is made on the timely filed (including extensions) federal income tax return for the taxable year in which the taxpayer has discharge of indebtedness income that is excludible from gross income under § 108(a). The election is made on a completed Form 982, in accordance with that Form and its instructions.

Sections 301.9100-1 through 301.9100-3 provide the standards that the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-3(a) provides that requests for extensions of time for regulatory elections (other than automatic extensions covered in § 301.9100-2) will be granted when the taxpayer provides evidence (including affidavits) to establish that the taxpayer acted reasonably and in good faith and the grant of relief will not prejudice the interests of the Government.

Under § 301.9100-3(b) a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional and the tax professional failed to make, or advise the taxpayer to make, the election. However, a taxpayer is not considered to have reasonably relied on a qualified tax professional if the taxpayer knew or should have known that the professional was not competent to render advice on the regulatory election or was not aware of all relevant facts. In addition, § 301.9100-3(b)(3) provides that a taxpayer is deemed not to have acted reasonably and in good faith if the taxpayer—

- (i) seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 at the time the taxpayer requests relief, and the new position requires or permits a regulatory election for which relief is requested;
- (ii) was informed in all material respects of the required election and related tax consequences but chose not to make the election; or
- (iii) uses hindsight in requesting relief. If specific facts have changed since the original deadline that make the election advantageous to a taxpayer, the Service will not ordinarily grant relief.

Section 301.9100-3(c)(1) provides that the Commissioner will grant a reasonable extension of time to make the regulatory election only when the interests of the Government will not be prejudiced by the granting of relief.

Section 301.9100-3(c)(1)(i) provides that the interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money). Similarly, if the tax consequences of more than one taxpayer are affected by the election, the Government's interests are prejudiced if extending the time for making the election may result in the affected taxpayers, in the aggregate, having a lower tax liability than if the election had been timely made.

Section 301.9100-3(c)(1)(ii) provides that the interests of the government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made or any taxable year that would have been affected by the election had it been timely made are closed by the period of limitations on assessment under § 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

Based on the information submitted by Taxpayer, we conclude that Taxpayer has acted reasonably and in good faith under § 301.9100-3(b). In addition, we conclude that granting relief will not prejudice the interests of the government under § 301.9100-3(c).

CONCLUSION

Based solely on the submitted information and the facts as represented in the ruling request, we grant Taxpayer an extension of 45 days from the date of this letter ruling to file an amended return to make the election under § 108(c)(3)(C) and § 1.108-5(b). The election is to be made on Form 982.

Except as expressly provided in the preceding paragraph, we do not express or imply an opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, this letter does not rule on whether the income at issue is properly treated as COD income under § 61(a)(12). In addition, except for the relief granted to make a late election, this letter does not rule on whether the income in fact qualifies for exclusion from income under any provision of § 108 (including § 108(a)(1)(D)) and § 1.108-5(b)).

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for ruling, it is subject to verification on examination.

Sincerely,

Shareen Pflanz
Senior Technician Reviewer, Branch 5
Office of Associate Chief Counsel
(Income Tax & Accounting)